

Message Text

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ACTION DLOS-09

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CEQ-01 CG-00 CIAE-00 COME-00 DODE-00 DOTE-00

EB-08 EPA-04 SOE-02 DOE-15 FMC-02 TRSE-00 H-02

INR-10 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

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SUBJECT: LOS - NG-5 CHAIRMAN'S ARTICLE 296 TEXT

HG5/15

8 MAY 1978

ORIGINAL: ENGLISH

CHAIRMAN'S SUGGESTION FOR A COMPROMISE FORMULA

-- ARTICLE 296

4. (A) UNLESS OTHERWISE AGREEED OR DECIDED BY THE PARTIES CONCERNED, DISPUTES RELATING TO THE INTERPRETATION OR APPLICATION OF THE PROVISIONS OF THIS CONVENTION WITH REGARD TO FISHERIES SHALL BE SETTLED IN ACCORDANCE WITH SECTION 2 OF PART XV OF THIS CONVENTION, EXCEPT THAT THE COASTAL STATE SHALL NOT BE OBLIGED TO ACCEPT THE SUBMISSION TO SUCH SETTLEMENT OF ANY DISPUTE RELATING TO ITS SOVEREIGN RIGHTS WITH RESPECT TO THE LIVING RESOURCES IN THE EXCLUSIVE ECONOMIC

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ZONE OR THEIR EXERCISE, INCLUDING ITS DISCRETIONARY POWERS FOR DETERMINING THE ALLOWABLE CATCH, ITS HARVESTING CAPACITY, THE ALLOCATION OF SURPLUSES TO OTHER STATES AND THE TERMS AND CONDITIONS ESTABLISHED IN ITS CONVERSION AND MANAGEMENT REGULATIONS.

(B) WHERE NO SETTLEMENT HAS BEEN REACHED BY RECOURSE TO THE PROVISIONS OF SECTION 1 OF PART XV OF THIS CONVENTION, A DISPUTE SHALL, NOTWITHSTANDING PARAGRAPH 3 OF ARTICLE 284, BE SUBMITTED TO THE CONCILIATION PROCEDURE PROVIDED FOR IN ANNEX IV, AT THE REQUEST OF ANY PARTY TO THE DISPUTE, WHEN IT IS ALLEGED THAT:

(I) A COASTAL STATE HAS MANIFESTLY FAILED TO COMPLY WITH ITS OBLIGATIONS TO ENSURE THROUGH PROPER CONSERVATION AND MANAGEMENT MEASURES THAT THE MAINTENANCE OF THE LIVING RESOURCES IN THE EXCLUSIVE ECONOMIC ZONE IS NOT SERIOUSLY ENDANGERED;

(II) A COASTAL STATE HAS ARBITRARILY REFUSED TO DETERMINE, UPON THE REQUEST OF ANOTHER STATE, THE ALLOWABLE CATCH AND ITS CAPACITY TO HARVEST THE LIVING RESOURCES WITH RESPECT TO STOCKS WHICH THAT OTHER STATE IS INTERESTED IN FISHING;

(III) A COASTAL STATE HAS ARBITRARILY REFUSED TO ALLOCATE TO ANY STATE, UNDER THE PROVISIONS OF ARTICLES 62, 69 AND 70 AND UNDER THE TERMS AND CONDITIONS ESTABLISHED BY THE

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COASTAL STATE CONSISTENT WITH THE PRESENT CONVENTION, THE WHOLE OR PART OF THE SURPLUS IT HAS DECLARED TO EXIST.

(C) IN ANY CASE THE CONCILIATION COMMISSION SHALL NOT SUBSTITUTE ITS DISCRETION FOR THAT OF THE COASTAL STATE.

(D) THE REPORT OF THE CONCILIATION COMMISSION SHALL BE COMMUNICATED TO THE APPROPRIATE GLOBAL, REGIONAL OR SUB-REGIONAL INTERGOVERNMENTAL ORGANIZATIONS.

(E) IN NEGOTIATING AGREEMENTS PURSUANT TO ARTICLES 69 AND 70 THE PARTIES, UNLESS THEY OTHERWISE AGREE, SHALL INCLUDE A CLAUSE ON MEASURES WHICH THE PARTIES SHALL TAKE IN ORDER TO MINIMIZE THE POSSIBILITY OF A DISAGREEMENT CONCERNING THE INTERPRETATION OR APPLICATION OF THE AGREEMENT, AND ON HOW THE PARTIES SHOULD PROCEED IF A DISAGREEMENT NEVERTHELESS ARISES. RICHARDSON.

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